IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.12899 of 2001

Between:

Siddeswara Touring Talkies, Rep. by its Proprietor - Abbas Ali Khan,
S/o. Rehman Khan, Hemavathi Village, Amarapuram Mandal,

Anantapur District.

..... PETITIONER

AND

1 Government of Andhra Pradesh, Rep. by its Secretary,
Home (General-A) Department, Secretariat Buildings,

Hyderabad.
2 The Joint Collector and Licensing Authority, Anantapur.
3 N.Purushotham, S/o. S.Narasimhaiah, R/o. Hemavathi Village,

Amarapuram Mandal, Anantapur District.
(R-3 impleaded as per Court Order in WPMP No.29328/2001 dt.16.11.2001)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ of Mandamus declaring the proceedings No. Rc.Mc.2/1008/95, dt.4-10-2000 issued by the Second Respondent and the proceedings in G.O.Rt.No.527, Home (General-A) Department, dt.29.3.2001 issued by the First Respondent, as illegal, improper, unjust and contrary to law and further declare that the petitioner-theatre is entitled for renewal of B-Form licence, since it is in lawful possession of the property admeasuring Ac.0-58 cents in Sy.No.558/1 situated at hemavathi Village, Amarapuram Mandal, Anantapur District.

Counsel for the Petitioner: MR.K.UMAPATHY

Counsel for the Respondent Nos.1 and 2: GP FOR HOME
Counsel for the Respondent No.3: MR.P.R.BALARAMI REDDY

The Court made the following:

ORDER:

M/s Siddeswara Touring Talkies, Hemavathi village in Anantapur District represented by its Proprietor is the petitioner in the instant writ petition. The petition is filed challenging the orders of the first respondent in G.O.Rt.No.527, dated 29.3.2001. By impugned Government orders, the first respondent dismissed the appeal filed by the petitioner under A.P. Cinemas (Regulation) Act, 1955 (the Act, for brevity). The appeal was filed by the petitioner before the Government against the proceedings of the second respondent dated 04.10.2000 whereby and whereunder the first respondent in exercise of powers under Section 10 of the Act while refusing the request of the petitioner for renewal of Form B licence directed the petitioner to approach the civil Court to prove his right over the site on which the touring talkies is situated. The second respondent also imposed a fine of Rs.7,000/- for violation of the provisions of the Act and A.P. Cinemas (Regulation) Rules, 1970 (the Rules).

The fact of the matter in brief may be noticed. The petitioner obtained lease of Acs.0.58 of land in Survey No.558/1 from Sidda Gangappa for establishing a touring talkies for a period of five years. He alleges that the lease was extended from time to time since 30.12.1977. It appears that in 1987, the property, in family partition, fell to the share of Basava Rajappa, S/o.Sidda Gangappa and allegedly the petitioner entered into lease agreement with Basava Rajappa. According to the petitioner, he allegedly purchased the land on 11.9.1996 under registered sale deed. After obtaining the lease, the petitioner obtained B Form licence under the provisions of the Act and Rules from the second respondent. The third respondent herein and one Nanja Gouda appears to have filed an application before the second respondent objecting for renewal of the licence alleging that the petitioner is not the owner of the property and that they are the owners of the property. The second respondent, however, granted renewal and advised those two persons to approach the civil Court. Aggrieved by the proceedings of the second respondent dated 22.3.1995 renewing licence in favour of the petitioner, N.Purushotham and Nanja Gouda filed W.P.No.5972 of 1995 before this Court. Subsequently, the writ petition was disposed of by this Court on 29.7.1999 directing that the rights of the parties have to be worked out only in common law Court and possession and enjoyment of the fifth respondent (petitioner herein) would depend upon the adjudication to be made by the common law Court. Therefore, N.Purushotham and Nanja Gouda filed O.S.No.70 of 1995 on the file of the Court of District Munsif, Madakasira seeking permanent injunction. In the meanwhile, the petitioner submitted an application for

renewal of B Form licence and the same was rejected by proceedings dated 04.10.2000. Aggrieved by which the petitioner unsuccessfully filed appeal before the first respondent.

Initially, the third respondent was not impleaded in this writ petition by the petitioner. He himself came on record by filing W.P.M.P.No.29328 of 2001, which was ordered by this Court on 16.11.2001. In his counter affidavit, the third respondent while denying all the allegations made by the petitioner and he alleged that the petitioner has suppressed true facts and made false allegations to get interim orders. The petitioner earlier filed W.P.No.971 of 2001 and obtained interim orders without making third respondent as a party. When the third respondent filed an application in W.P.M.P.No.5754 of 2001 to get impleaded in the matter, the petitioner's Counsel having accepted the papers again filed the present writ petition being W.P.No.12899 of 2001 suppressing the factum of filing earlier writ petition. The petitioner filed the writ petition suppressing the earlier writ petition when the application to vacate interim order filed by the third respondent herein, in the earlier writ petition was pending. After obtaining interim orders in the present writ petition, the Counsel for the petitioner submitted that the W.P.No.971 of 2001 has become infructuous. The petitioner has misled the Court with a view to get interim orders. The petitioner is not running any touring talkies in the land admeasuring Acs.0.58 in Survey No.558/1. The petitioner has abandoned the cinema after expiry of lease period and there is no tent or any other material in the property. The petitioner took lease of Acs.0.58 out of Acs.2.50 from Basava Raju for running touring talkies and obtained licence which expired on 02.11.1999. After expiry of the lease, the petitioner did not screen any film. Subsequently, the third respondent and Nanjaiah Goud purchased the land to an extent of Acs.0.50 under registered sale deed No.212, dated 06.2.1995 and took possession of the land from original owner Basava Raju. The petitioner brought into existence a fake agreement of lease till 27.3.1997 in the name of Basava Raju and made application on 25.2.1995 for renewal of B Form licence under the Act. After coming to know of the same, the third respondent and Nanjaiah Goud filed objections before the second respondent. But the second respondent renewed the licence assuming that Basava Raju did not cancel the lease agreement. Challenging the same, W.P.No.5972 of 1995 was filed before this Court, which was disposed of on 29.7.1999 directing the parties to approach civil Court. The third respondent and Nanjaiah Goud, therefore, filed O.S.No.70 of 1995 and obtained *ad* interim injunction by order dated 04.5.1995 in I.A.No.217 of 1995 restraining the petitioner from interfering with the possession. In the said suit, the petitioner was set *ex parte* on 30.10.1996 and the suit was decreed as prayed for. The suit was, subsequently, dismissed for default and third respondent filed application for restoration of the suit and the suit is still pending. Having regard to this when the petitioner approached for renewal, the second respondent refused to renew the licence directing the petitioner to approach the civil Court.

Learned Senior Counsel for the petitioner, Sri P.Gangaiah Naidu, submits that in the absence of any order of the civil Court restraining the petitioner from enjoying the possession, it was illegal on the part of the respondents 1 and 2 to deny renewal of the licence. Though the petitioner in his affidavit refers to the sale deed

which he allegedly obtained from the owners, the same was not filed in W.P.No.5972 of 1995. The petitioner did not place a copy of sale deed allegedly executed in his favour. The learned Senior Counsel also did not place any reliance on any statutory provision or a precedent based on which the petitioner is claiming his right to continue the cinema theatre on a leased land though it is vehemently opposed by the third respondent who allegedly purchased the property from the original owners under a registered sale deed.

Be that as it is, the learned Counsel for the third respondent and learned Assistant Government Pleader for Home opposed the writ petition. They contend that this Court in W.P.No.5972 of 1995 left the dispute to be decided by the civil Court and unless and until the petitioner gets his right to continue to enjoy property resolved by civil Court, he cannot be permitted to run the cinema theatre.

The question therefore is whether the petitioner has right to seek renewal of B Form licence even though there is a dispute between him and the third respondent and another. Rule 11 (e) of the Rules requires the applicant to satisfy the licensing Authority that he is in lawful possession of the site or building. Admittedly, the petitioner's lease, which commenced some time in 1977-1978, expired in 1995 and thereafter he allegedly purchased the property from Basava Rajappa, S/o.Sidda Gangappa. Curiously the petitioner did not produce any such sale deed, under which he purchased the property, either before the original authority or appellate authority. The petitioner has not produced any document evidencing the averment made in the affidavit accompanying the writ petition. Be it noted that as per Rule 6 of Writ Proceedings Rules, 1977, all averments made in the writ petition have to be proved by producing necessary documentary evidence and mere assertions in the affidavit cannot partake the character of proof. In the absence of any proof, in a given case, the Court can even take a view that such unproven statements are *per jurial*.

This Court in W.P.No.5972 of 1995 dated 29.7.1999 already directed the parties to resolve the dispute in a civil Court. The short order passed in the writ petition reads as under:

> Both writ petition and the Contempt Case have been heard together.
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> In the writ petition, the order dated 22.3.1995 passed by the Joint Collector, Anantapur District, granting B-Form licence to the 5th respondent to run Siddeswara Touring Talkies, Hemavathi Village of Amarapuram Mandal has been questioned. But, the said licence was valid upto 30.6.1995 only and thereafter, there is no renewal of the same. It is also stated by Mr.P.Gangaiah Naidu, the learned counsel for the 5th respondent, that after 30.6.1995, his client i.e., 5th respondent has not been running the cinema theatre. But, he states that the 5th respondent had purchased the cinema theatre. Mr.K.Venkata Ramaiah, the learned counsel for the Petitioner, submits that his client i.e., the petitioner, namely, N.Purushotham is the prior purchaser of the cinema theatre having obtained a registered sale deed on 6.2.1995. But, this rival dispute regarding the title can be gone into only by the Civil Court. Suffice it to say that the 5th respondent cannot run the theatre

so long as there is a restraint by the civil court.

In the circumstances, both the writ petition and the contempt case are disposed of with a direction that the rights of the parties have to be worked out only in a common law court and possession and enjoyment of the 5th respondent of the said cinema theatre shall depend upon the adjudication to be made by the common law court. No costs.

In the face of the above judgment before approaching the second respondent or having approached the second respondent for renewal at the time of consideration, the petitioner ought to have produced necessary documents to show his lawful possession. Having failed to do so, he filed the writ petition and obtained interim orders. Further as alleged by the third respondent (this is not denied by petitioner), he already filed another writ petition being W.P.No.971 of 2001 and obtained interim orders and when the third respondent moved an application for vacating stay, the petitioner again filed the present writ petition. This only shows the anxiety of the petitioner to resort to misrepresentation in obtaining interim orders from a public law court. The public law remedy is not available to such persons, who come to the Court with unclean hands and obtain orders by misrepresentations.

The petitioner's lease already expired and he did not produce any document to show that his lease was in existence. Even it is surmised that he continued after expiry of lease period, he is only a tenant holding over, which is not lawful possession. In **Ramalinga Raju v. Govt. of A.P.** after referring to the decision of Supreme Court in **M.C. Chocklingam v. Manickavasagam**, a Division Bench of this Court considered this aspect of the matter and observed as under:

Rule 11(e) of the A.P.Cinemas (Regulation) Rules is analogous to Rule 13 of the Madras Cinemas (Regulation) Rules, 1957. What holds good for Rule 13 of the Madras Cinemas (Regulation) Rules also equally holds good to Rule 11(e) of the A.P.Cinemas (Regulation) Rules, 1970. Hence the above cited decision of the Supreme Court, which dealt with the possession as contemplated by Rule 13 of the Madras Cinemas (Regulation) Rules, applies to Rule 11(e) of the A.P.Cinemas (Regulation) Rules. This ruling, therefore, applies in all fours to the case on hand. This ruling of the Supreme Court, therefore, makes it clear that Rule 11(e) of the Rules requires the applicant to satisfy the licensing authority that he is *in lawful possession* of the site, building and equipment and a lessee after the expiry of the lease period cannot be held to be *in lawful possession* and the licensing Authority has no jurisdiction to grant licence if the applicant ceased to be the tenant after the expiry of the lease period since lawful possession of the site and the building is co-terminous with the subsistence of the lease.

Applying the above ratio, it must be held that the petitioner was not in lawful possession and therefore, there was no infirmity in the orders passed by the second respondent which was confirmed by the first respondent. The remedy of the petitioner lies in getting his right declared by the civil Court. Further, in the absence of any rebuttal of the averments made in the counter affidavit of the third respondent, it must be held that the petitioner has approached this Court with unclean hands and

he is not entitled to any relief.

The writ petition is devoid of merits and is, accordingly, dismissed with costs and the interim order passed by this Court shall stand withdrawn.

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(**V.V.S. RAO,J**)

27.06.2005

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MEMORANDUM OF COSTS

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Respondent No.3 costs

Rs.Ps.

Stamps for Vakalatnama … 05.00

Advocate's Fee … 100.00

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To be paid by the Petitioner to the Respondent No.3 Rs.105.00

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in words One hundred and Five only.

To

1 The Secretary, Government of Andhra Pradesh,
Home (General-A) Department, Secretariat Buildings,

Hyderabad.

2 The Joint Collector and Licensing Authority, Anantapur.
3 Two CCs to the Government Pleader for Home,

High Court Buildings, Hyderabad. (OUT)

4 Two C.D. Copies.